

**UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE**

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**LISA DESOMBRE, a natural guardian of  
A.H., a minor**

**Plaintiff**

**v.**

**KB TOYS, INC., d/b/a KB TOYS**

**Defendant**

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**C.A. No.: 07-CV-22**

**JOINT STATUS REPORT OF PARTIES REGARDING  
F.R.C.P. 26(f) PLANNING MEETING**

Pursuant to Federal Rule of Civil Procedure 26(f) a telephonic meeting was held on July 27, 2007, and was attended by:

Marc H. Snyder, Esquire for the Plaintiff  
Daniel McKenty, Esquire for the Defendant

**1. Jurisdiction and Service**

Jurisdiction is proper. Service was timely accomplished on the defendant.

**2. Substance of the Action**

Plaintiff:

Plaintiff, Lisa DeSombre, on behalf her minor child (AH - age 5 on date of incident), has alleged that while shopping at KB Toys, unknown to her, a contractor's hammer was situated on top of a cardboard box containing a child's costume for sale. Plaintiff reached up to grab the box, when the contractor's hammer fell about 4 ½ feet, and struck her minor child's head. Plaintiff alleges that her son, AH, has suffered from an array cognitive and neurological problems as result of being struck on the head by the hammer.

Defendant:

Defendant has answered Plaintiff's Complaint denying proximate causation and liability and has asserted affirmative defenses of comparative negligence, intervening or superceding cause and negligent acts of a third person.

**3. Identification of Issues**

Plaintiff:

It is plaintiff's understanding that defendant is contesting both liability and proximate causation.

Defendant:

Defendant is contesting both proximate causation and liability.

**4. Narrowing of Issues**

The parties are in the process of scheduling plaintiff, Lisa DeSombre's deposition, which is expected to help clarify the issues of this matter.

**5. Relief**

Plaintiff alleges that Minor-Plaintiff, AH, has suffered cognitive and neurological deficits, which has caused headaches and excessive blinking, and affected his concentration and focus, and has had a direct impact on his school work.

**6. Amendment to Pleadings**

The parties do not anticipate any amendment to the pleadings.

**7. Joinder of Parties**

The parties do not anticipate joining additional parties.

**8. Discovery**

Plaintiff:

Plaintiff anticipates issuing routine discovery requests, including interrogatories, requests for production and, possibly, requests for admissions. In addition, plaintiff anticipates taking depositions of the store manager, store clerk, and eye-witness to the accident. Expert discovery will also be needed. Plaintiff anticipates that factual discovery can be completed within six months.

Defendant:

Defendant anticipates issuing routine discovery requests, including interrogatories, Requests for Production and, possibly, Requests for Admission. Additionally, the parties are in the process of scheduling the deposition of Plaintiff Lisa Desombre. Defendant anticipates

that expert discovery may be required and further anticipates that all factual discovery can be completed within 6 months.

**9. Estimated Trial Length**

The parties estimate the length of the trial to be 3-4 days. Bifurcation is not desirable. The parties will explore possible ways to reduce the length of trial, such as by the use of stipulations, summaries or statements.

**10. Jury trial**

A jury trial of twelve has been demanded.

**11. Settlement**

No settlement discussions have taken place to date. The parties will explore settlement possibilities during the discovery phase of the trial. It is too early to comment meaningfully on whether referral to the Magistrate for mediation or other ADR mechanism is appropriate. The Court should order the parties to provide an update on this issue to the Court in three months.

**12. Other matters**

None at this time.

**13. Statement of Counsel**

Counsel for the parties have conferred about each of the above matters.

Submitted this 7<sup>th</sup> day of December, 2007

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